

1452.280-2**48 CFR Ch. 14 (10-1-13 Edition)**

the provision must be given to potential offerors.

NOTICE OF INDIAN SMALL BUSINESS ECONOMIC ENTERPRISE SET-ASIDE (JUL 2013)

Under the Buy Indian Act, 25 U.S.C. 47, offers are solicited only from Indian economic enterprises (Subpart 1480.8) that are also small business concerns. Any acquisition resulting from this solicitation will be from such a concern. Offers received from enterprises that are not both Indian economic enterprises and small business concerns will not be considered and will be rejected.

(End of provision)

1452.280-2 Notice of Indian economic enterprise set-aside.

As prescribed in 1480.503(d)(4) and 1480.504-1(f)(5), insert the following clause in solicitations and contracts involving Indian economic enterprise set-asides. If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE (JUL 2013)

(a) Definitions as used in this clause.

Indian means a person who is a member of an Indian Tribe or "Native" as defined in the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat. 688; 43 U.S.C. 1601).

Indian Economic Enterprise means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit, provided that:

(i) The combined Indian or Indian Tribe ownership shall constitute not less than 51 percent of the enterprise; (ii) the Indians or Indian Tribes shall, together, receive at least a majority of the earnings from the contract; and (iii) the management and daily business operations of an Indian economic enterprise must be controlled by one or more individuals who are members of an Indian Tribe. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

(1) At the time an offer is made in response to a written solicitation;

(2) At the time of contract award; and,

(3) During the full term of the contract.

Indian Tribe means an Indian Tribe, band, nation, or other recognized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Na-

tive village, regional or village corporation established under the Alaska Native Claims Settlement Act (PL 92-203, 85 Stat. 688; 43 U.S.C. 1601).

Representation means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart 1480.8.

(b) General.

(1) Under the Buy Indian Act, offers are solicited only from Indian economic enterprises.

(2) BIA will reject all offers received from ineligible enterprises.

(3) Any award resulting from this solicitation will be made to an Indian economic enterprise, as defined in paragraph (a) of this clause.

(c) Required Submissions. In response to this solicitation, an offeror must also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the offeror over the contract term as required by section 1452.280-3, Subcontracting Limitations clause;

(2) A description of the source of human resources for the work to be performed by the offeror;

(3) A description of the method(s) of recruiting and training Indian employees, indicating the extent of soliciting employment of Indian persons, as required by DIAR 1452.226-70, Indian Preference, or DIAR 1452.226-71, Indian Preference Program, clause(s);

(4) A description of how subcontractors (if any) will be selected in compliance with the "Indian Preference" or "Indian Preference Program" clause(s);

(5) The names, addresses, and descriptions of work to be performed by Indian persons or economic enterprises being considered for subcontracts (if any) and the percentage of the total direct project work/costs they would be performing;

(6) Qualifications of the key personnel (if any) that will be assigned to the contract; and

(7) A description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation.

(d) Required Assurance. The offeror must provide written assurance to the Indian Affairs that it will comply, or has, complied fully with the requirements of this clause. It must do this before Indian Affairs awards the Buy Indian contract, and upon successful and timely completion of the contract, but before the Indian Affairs Contracting Officer (CO) accepts the work or product.

(e) Non-responsiveness. Failure to provide the information required by paragraphs (c)

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and (d) of this clause may cause Indian Affairs to find an offer non-responsive and to reject it.

(f) Eligibility.

(1) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an Indian economic enterprise ineligible for contracts awarded under the Buy Indian Act.

(2) If a contractor no longer meets the definition of an Indian economic enterprise after award, the contractor must notify the CO in writing. The notification must include full disclosure of circumstances causing the contractor to lose eligibility status and a description of any actions that the contractor will take to regain eligibility. Failure to give the CO immediate written notification means that: (i) The economic enterprise may be declared ineligible for future contract awards under this part; and (ii) Indian Affairs may consider termination for default if it is in the best interest of the government.

(End of clause)

1452.280-3 Subcontracting limitations.

A contractor shall not subcontract to other than responsible Indian economic enterprises more than 50 percent of the subcontracted work when the prime contract was awarded under the Buy Indian Act. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment. As prescribed in 1480.601(b), insert the following clause in each written solicitation or contract to provide supplies, services, or covered construction:

SUBCONTRACTING LIMITATIONS (JUL 2013)

(a) Definitions as used in this clause.

(1) *Concern* means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. It includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign busi-

ness entity, *i.e.*, any entity located outside the United States and its outlying areas.

(2) *Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

(3) *Subcontractor* means a concern to which a contractor subcontracts any work under the contract. It includes subcontractors at any tier who perform work on the contract.

(b) Required Percentages of work by the concern. The contractor must comply with FAR 52.219-14 Limitations on Subcontracting clause in allocating what percentage of work to subcontract. Of the work subcontracted, no more than 50 percent may be subcontracted to a concern other than a responsible Indian economic enterprise.

(c) Indian Preference. Regardless of the contract type for services, supplies, or covered construction, the contractor agrees to give preference to Indian organizations and Indian owned economic enterprises in awarding subcontracts under this contract in accordance with DIAR 1452.226-71, Indian Preference.

(d) Cooperation. The contractor must:

(1) Carry out the requirements of this clause to the fullest extent; and

(2) Cooperate in any study or survey that the CO, Indian Affairs, or its agents may conduct to verify the contractor's compliance with this clause.

(e) Incorporation in Subcontracts. The contractor must incorporate the substance of this clause, including this paragraph (e), in all subcontracts for supplies, services, and construction awarded under this contract.

(End of clause)

1452.280-4 Indian economic enterprise representation.

As prescribed in 1480.801(a), insert the following provision in each written solicitation for supplies, services, or covered construction:

INDIAN ECONOMIC ENTERPRISE REPRESENTATION (JUL 2013)

The offeror represents as part of its offer that it [] does [] does not meet the definition of Indian economic enterprise as defined in 1480.201.

[End of provision]